IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9630 of 2000

with

SPECIAL CIVIL APPLICATION No 9656 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT VIDHYAPITH

Versus

BECHARBHAI NAGAJIBHAI BHARWAD

Appearance:

MR GM JOSHI for Petitioner No. 1-2

MRS DT SHAH for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 14/10/2004

ORAL JUDGEMENT

Since these petitions involve identical questions of law and facts, they have been heard together and are being disposed of by this common judgment.

2. Short facts leading to the present petitions are that the petitioner No.1, Gujarat Vidyapith had employed the respondent No.1 in each of these petitions in the Press run by the petitioner No.1. It is the case of the petitioners that the Gujarat Vidyapith is declared as deemed University under section 3 of the University Grants Commission Act. It is not in dispute that the Press run by the petitioners called Prakashan Mandir was closed down permanently and on account of this closure, the respondent No.1 in each of the petitions had to be terminated from service. The petitioners, therefore, by orders dated 26th October, 1997, terminated the services of the respondent No.1 in each of the petitions. The said respondents employees challenged the action of the petitioners before this High Court by filing Special Civil Applications which later on came to be transferred to the Gujarat Universities Services Tribunal and were numbered as Application Nos.6/99 and 7/99 respectively.

3. The Gujarat Universities Services Tribunal by its common judgment and order dated 29th December, 1999 was pleased to allow the applications of the employees concerned and the orders of termination of the employees were quashed and set aside being in contravention of the mandatory provisions of section 14 of the Gujarat Universities Services Tribunal Act, 1983 which is for the sake of brevity referred to as the "said Act" at some places in this judgment.

4. While disposing of the said applications, the learned Tribunal negatived the contentions of the petitioners herein that the petitioner No.1 being a deemed university is not amenable to the jurisdiction of the Gujarat Universities Services Tribunal. On the merits of the matter, while considering the orders of termination passed by the petitioners, the Tribunal found that before terminating the services of the employees concerned, no notice was issued by the petitioners nor any explanation sought for from them. In that view of the matter, the Tribunal found that the action of the petitioners was in violation of the provisions of section 14 of the said Act.

5. Though detailed averments have been made in the petitions by the petitioners to canvass the contention that the petitioner No.1 being a deemed University, the

Gujarat Universities Services Tribunal had no jurisdiction to entertain the applications of the employees, the learned counsel for the petitioners has conceded that this question has been concluded by the decision dated 28th June 1999 rendered by the learned single Judge of this High Court in Special Civil Application No.12987 of 1994 in the case of Budhabhai Naranbhai Makwana v. Gujarat Vidyapith. In that view of the matter, the question of jurisdiction of the Tribunal need not be deliberated upon any further.

6. The main question, therefore that requires consideration in these petitions is whether the view of the Tribunal that the termination of the employees concerned was in violation of the provisions of section 14 of the Gujarat Universities Services Tribunal Act, 1983 is correct or not. To put it differently, the question is whether the termination orders of the employees offend the provisions of section 14 of the Gujarat Universities Services Tribunal Act or not.

7. Learned counsel appearing for the petitioners has submitted that the reason for terminating the services of the employees was closing down of the Press run by the petitioners and that therefore the services of the concerned employees were no longer required. He submits that it was a termination simpliciter and the petitioner had offered compensation to the employees as required under the law.

7.1 It is the contention of the counsel for the petitioners that section 14 of the said Act applies to cases where the employer has removed the employee by way of penal action and would not cover the cases of termination simpliciter. He submits that there is no dispute about the fact that the termination was founded not on the allegations of misconduct and therefore the same not being penal in nature, the procedure prescribed under section 14 of the said Act would not apply.

7.2 The counsel for the petitioners has also contended that the provisions of section 36 of the Gujarat Secondary Education Act, 1972 or the provisions of section 40B of the Bombay Primary Education Act, 1947 cannot be compared with the provisions of section 14 of the Gujarat Universities Services Tribunal Act. He, therefore, contends that the decisions of this Court rendered in the background of the abovementioned provisions of the Gujarat Secondary Education Act as well as Bombay Primary Education Act cannot be applied to the facts of the present case in view of the language used in

section 14 of the said Act.

8. Appearing for the respondent No.1 in each of the petitions, learned counsel Mrs.D.T.Shah has contended that even in case of simpliciter termination, the petitioners were required to follow the procedure laid down in section 14 of the said Act and admittedly when no inquiry was held nor the employees were given reasonable opportunity of being heard before terminating their services, the Tribunal has correctly found that the terminations were contrary to the mandatory provisions of section 14 of the said Act.

8.1 It is the contention of the counsel for the respondent No.1 in each of the petitions that the provisions of section 14 of the Gujarat Universities Services Tribunal Act are in pari materia to section 36 of the Gujarat Secondary Education Act and section 40B of the Bombay Primary Education Act. On the basis of this contention, she submits that even in case of termination simpliciter, inquiry as envisaged in section 14 of the Gujarat Universities Services Tribunal Act was a pre-condition before validly terminating the services of the employees.

8.2 The counsel has pointed out that in the decision of Chhaganbhai P. Oza v. The Ahmedabad Jesuit Schools Society, 1978 GLR 347, learned single Judge of this High Court while interpreting section 36 of the Gujarat Secondary Education Act had come to the conclusion that the provision is applicable not only in regard to penal action resulting in dismissal or removal or reduction in rank, but also to an action which results in termination of service of a teacher otherwise than by way of a disciplinary action.

8.3 Learned counsel for the employees has also relied on a decision of the learned single Judge of this High Court in the case of Mahuva Kelavani Sahayak Samaj v. Rasiklal K. Joshi, 1996 (2) GLH 269 in which while interpreting the provisions of section 40B of the Bombay Primary Education Act, this High Court had come to the conclusion that by virtue of the provisions of section 40B of the Bombay Primary Education Act, services of the employee cannot be terminated without following the procedure laid down therein even if the termination is a simpliciter termination.

9. Part III of the Gujarat Universities Services Tribunal Act begins with a heading "Procedure for imposition of penalty on University employees". Below

the said heading, one finds section 14 which reads as follows:-

"14. (1) No University employee shall be dismissed or removed from University service or reduced in rank nor shall his service be otherwise terminated by the University except after an inquiry in which the employee has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that nothing in this sub-section shall apply to a University employee who is appointed temporarily for a period less than a year or an employee appointed temporarily on a leave vacancy for the period of such vacancy.

(2) No penalty, other than a penalty referred to in sub-section (1) shall be imposed on a University employee unless such employee is given a reasonable opportunity of being heard.

(3) A University employee aggrieved by an order of any penalty imposed on him under sub-section (1) may make an appeal to the Tribunal within a period of thirty days from the date of the order passed by the disciplinary authority."

Section 15 of the said Act provides for suspension pending inquiry proposed against the employee and reads as follows:-

"15. Where a University employee is suspended pending any inquiry proposed to be held against him, the employee shall, during the period of suspension, be entitled to such subsistence allowance and on such conditions as may be prescribed:

Provided that where an order of suspension is made by an officer or authority, not being the disciplinary authority, the facts of such suspension together with the grounds therefor shall be communicated by the officer, or as the case may be, authority within seven days after such suspension to the disciplinary authority an such suspension shall be subject to the ratification by the disciplinary authority within a period of forty-five days from the date of the receipt of the communication by the disciplinary authority and where such

ratification is not communicated to the officer or authority making the order of suspension within the said period of forty-five days, the suspension of the employee shall cease to have effect on the expiry of such period."

It may be noted that part III of the said Act comprises of only these two sections.

10. From the reading of section 14(1) of the said Act, it is clear that it provides that no employee shall be dismissed or removed from University service or reduced in rank nor shall his service be otherwise terminated except after an inquiry in which he has been informed of the changes against him and given a reasonable opportunity of being heard in respect of those charges. In sub-section (2) of section 14, it is provided that no penalty other than the penalty referred to in sub-section (1) shall be imposed unless the employee concerned is given a reasonable opportunity of being heard. Under sub-section (3) of section 14, an aggrieved employee by an order of penalty imposed on him under sub-section (1) is permitted to make an appeal to the Tribunal within a period of 30 days from the date of the order passed by the Disciplinary Authority.

10.1 It can thus be seen that section 14 of the Gujarat Universities Services Tribunal Act deals with the penal actions of the University against the employee concerned. It is in this context provided that no such action of dismissal, removal from service, reduction in rank or otherwise that of termination be taken except after holding an inquiry informing the employee of the charges against him and giving him a reasonable opportunity of being heard in respect of those charges. As noted earlier, sub-section (2) of section 14 of the Gujarat Universities Services Tribunal Act provides for penalty other than those envisaged under sub-section (1) of section 14. The order that may be passed by the University under sub-section (1) of section 14 has been made appealable to the Tribunal at the instance of the employee. The entire section, therefore, deals with the action of the University of taking penal action against the employee. While sub-section (1) of section 14 deals with the penal action of dismissal, removal from service or reduction in rank or otherwise terminating the service, sub-section (2) of section 14 deals with imposition of penalty other than those specified in sub-section (1) of section 14. Seen from this angle, in my view, the procedure prescribed under sub-section (1) of section 14 has relevance only for a penal action taken

by the University and would not apply to a case where the services of the employee are sought to be terminated by way of simpliciter termination. The words "otherwise terminated" may however pose some difficulty. It can be urged, as has been done by the counsel for the respondent No.1 that the term "otherwise terminated" must be construed as termination simpliciter and cannot be a penal action proposed by the University.

10.2 In service jurisprudence, term "termination" signifies severance of master and servant relation by an action of the master. When used in juxtaposition to the term "dismissed" or "removed", it signifies simpliciter termination and not a penal termination. Instances are, however, not unknown nor uncommon where termination is founded on allegations of misconduct and if such terminations are not preceded by an inquiry, have always been struck down by courts as being opposed to the principles of natural justice. Thus, it is not impossible to envisage the action of the employer to terminate the services of the employee by way of penalty.

10.3 In the decision of P.L.Dhingra v. Union of India, AIR 1958 SC 36, the Hon'ble Supreme Court had while discussing the question of nature of termination whether being simpliciter or punitive made the following observations:

"The position may, therefore, be summed up as follows: Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this Court in Satish Chander Anand v. The Union of India (supra). Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Art. 311(2), as has also been held by this Court in Shyam Lal v. The State of Uttar Pradesh, 1995-I SCR 26: (AIR 1954 SC 369). In either of the two abovementioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under R. 52 of the Fundamental Rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of

> employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive, operating on the mind of the Government is, as Chagla C.J. has said in Shrinivas Ganesh v. Union of India (supra), wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Art.311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Art. 311 must be complied with. As already stated if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Art. 311, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his future career. A reduction in rank likewise may be by way of punishment or it may be an innocuous thing.' If the Government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment."

From the above observations, it can be seen that in service jurisprudence concept of penal termination is not unknown. In that view of the matter, one has to interpret the term "otherwise terminated" as appearing in sub-section (1) of section 14 of the Gujarat Universities

Services Tribunal Act. Viewed in the context of Section 14 of the said Act, only possible view is that it refers to a penal action of the employer and has no reference to the simpliciter termination sought to be brought about by the University. Unless viewed from this angle, the subsequent words appearing in sub-section (1) of section 14 of the said Act, namely, "..... be otherwise terminated by the University except after an inquiry in which the employer has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges" cannot be reconciled. The procedure required to be followed as noticed earlier for dismissal, removal, reduction in rank or termination of the employee is to hold an inquiry in which the employee has been informed of the charges against him and give a reasonable opportunity of being heard in respect of those charges. Thus, the action has to be preceded by an inquiry in which the employee has been informed of the charges against him and also of giving a reasonable opportunity of being heard with respect to such charges. In light of this clear language of sub-section (1) of section 14 of the said Act, words "otherwise terminated" used in the sub-section cannot be construed as a simpliciter termination and has to be understood as a termination sought to be brought about by the employer by way of a penalty to be imposed against the employee. Sub-section (2) of section 14 further fortifies this position when it provides for a somewhat different procedure to be followed for imposition of penalties other than those referred to in sub-section (1). Thus, reading of sub-section (2) of section 14 also makes it further clear that what is envisaged in sub-section (1) of section 14 of the said Act is a penal action of the employer. Sub-section (3) of section 14 once again provides for an appeal to the Tribunal to an employee who is aggrieved by an order of penalty imposed upon him under sub-section (1) of section 14. Thus, language of sub-section (3) of section 14 of the said Act further lends support to this interpretation since it refers only to the penal action imposed upon the employee under sub-section (1) of section 14. Viewed from this angle, I have no manner of doubt that the words "otherwise terminated" appearing in sub-section (1) of section 14 of the said Act refer to a penal action of termination proposed to be taken by the employee.

11. In the decision in the case of Reema Aggarwal v. Anupam, AIR 2004 SC 1418, while discussing the principles of interpretation of statute, the Hon'ble Supreme Court has made following observations :-

"24. In Reserve Bank of India etc. etc. v. Peerless General Finance and Investment Co. Ltd. and others etc. etc. (1987 (1) SCC 424) while dealing with the question of interpretation of a statute, this Court observed:

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phase and word by word. If a statute is looked at in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the contest. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

11.1 In the decision of Prakash Nath Khanna v. I.T. Commr. 2004 AIR SCW 3692, the Hon'ble Supreme Court observed that a heading of a section or marginal note may be relied upon to clear any doubt or ambiguity in interpretation of the provision and to discern the legislative intent.

12. Learned advocate for the petitioners has pointed out that in the decision in the case of Bhinka v. Charan Singh, AIR 1959 SC 960, while considering the effect of the headings prefixed to section or set of sections, the Hon'ble Supreme Court observed that if there is any doubt in the interpretation of the words in the section, the headings certainly helps the Court to resolve that doubt.

12.1 On the basis of this principle also and considering the heading of Chapter III in which the said section 14 is to be found, one gets added support for the

conclusion that section 14 (1) of the said Act deals with only the penal actions of the University.

13. Keeping in mind the above judicial pronouncements on the interpretation of the statute, in my view it is now necessary to examine the contention of the learned counsel for the employees whether the provisions of section 14 of the Gujarat Universities Services Tribunal Act are in pari materia with the provisions of section 36 of the Gujarat Secondary Education Act and section 40B of the Bombay Primary Education Act. Section 36 of the Gujarat Secondary Education Act, reads as follows:-

"36.(1) No person who is appointed as a headmaster, a teacher or a member of non-teaching staff of a registered private secondary school shall be dismissed or removed or reduced in rank nor shall his service be otherwise terminated by the manager until --

(a) he has been given by the manager a reasonable opportunity of showing cause against the action proposed to be taken in regard to him, and

(b) the action proposed to be taken in regard to him, has been approved in writing by an officer authorised in this behalf by the Board.

Provided that nothing in this sub-section shall apply to any person who is appointed for a temporary period only.

(2) The officer referred to in clause (b) of sub-section (1) shall communicate his decision within a period of forty-five days, from the date of receipt by him of the proposal under the said clause (b) and if such decision is not communicated to the manager by the said officer within such period the action proposed to be taken under the said clause (b) shall be deemed to have been approved by the said officer.

(3) Where a head master, a teacher or a member of non-teaching staff of a registered private secondary school is suspended by the manager of the school pending any inquiry proposed to be held against him, the fact of such suspension together with the grounds therefor, shall be immediately communicated by the manager to an officer authorised in this behalf by the Board, and such suspension shall be subject to ratification by the said officer within a period

of forty five days from the date of receipt of the communication in this behalf by such officer and if such ratification is not communicated to the manager by the said officer within such period, the suspension under reference shall cease to have effect on the expiry of such period.

(4) Where a head master, a teacher or a member of the non-teaching staff of a registered private secondary school desires to submit his resignation, the resignation shall be tendered by him in person to the District Education Officer concerned and shall not be accepted by the manager unless it is so tendered and forwarded to him by such officer duly endorsed. The acceptance of any such resignation tendered in contravention of this sub-section shall be ineffective.

(5) Any person aggrieved by an order of the authorised officer under clasue(b) of sub-section (1) may make an appeal to the Tribunal within a period of thirty days from the date of the decision of the authorised officer."

Section 40-B of the Bombay Primary Education Act reads as follows:-

"40B.(1)(a) No teacher of a recognised private primary school shall be dismissed or removed or reduced in rank nor shall his service be otherwise terminated until --

(i) he has been given by the manager an opportunity of showing cause against the action proposed to be taken in regard to him, and

(b) the action proposed to be taken in regard to him, has been approved in writing by the administrative officer of the school board in the jurisdiction of which the private primary school is situate:

Provided that nothing in this clause shall apply to a teacher who is appointed temporarily for a period less than a year or a teacher appointed temporarily on a leave vacancy for a period less than a year.

Explanation - A teacher who is appointed temporarily for a period of less than a year or a teacher who is appointed temporarily on a leave

vacancy for a period of such vacancy shall not be deemed to be a teacher appointed temporarily for such period, if he has at any time prior to such appointment served as a teacher either in the same private primary school or in another private primary school under the same management and the aggregate of the period of such post service and the period of service for which he is appointed exceeds one year.

(b) The administrative officer shall communicate to the manager of the school in writing his approval or disapproval of the action proposed, within a period of forty five days from the date of the receipt by the administrative officer of such proposal.

(2) Where the administrative officer fails to communicate either approval or disapproval within a period of forty five days specified in clause (b) of sub-section (1) the proposed action shall be deemed to have been approved by the administrative officer on the date of the expiry of the said period.

(3) No penalty being the penalty other than that referred to in sub-section (1) shall be imposed on a teacher of the private primary school unless such teacher has been given reasonable opportunity of being heard.

(4) Where a teacher of a private primary school is suspended by the manager of the school pending any inquiry proposed to be held against him the fact of his suspension together with the grounds therefore shall be communicated within a period of seven days, after such suspension by the manager to the administrative officer of the school board in the jurisdiction of which the school is situate, and such suspension shall be subject to ratification by the administrative officer within a period of forty five days from the date of receipt of communication in this behalf by the administrative officer and if such ratification is not communicated to the manager by the administrative officer within such period, the suspension of such teacher shall cease to have effect on the expiry of the said period:

Provided that a teacher shall, during the period of suspension, be entitled to such

subsistence allowance, and on such terms and conditions as may be prescribed.

(5) Any teacher aggrieved by the order of the administrative officer under sub-clause (ii) of clause (a) of sub-section (1) may make an appeal to the Tribunal within a period of thirty days from the date on which the administrative officer has approved or deemed to have approved the action.

Explanation -- For the purposes of this section, and section 40C --

(a) "manager" in relation to a private primary school means a person or body of persons in charge of the control or of management of the school;

(b) "teacher" mans a teacher of a recognised private primary school;

(c) "Tribunal" means a Tribunal constituted under section 40F."

One may notice that in sub-section (1) of section 36 of the Gujarat Secondary Education Act, it is provided that no person who is appointed as a head-master, a teacher, or a member of non-teaching staff of a registered private secondary school shall be dismissed or removed or reduced in rank nor his services be otherwise terminated until (a) he has been given a reasonable opportunity of showing cause against the action proposed to be taken and (b) the action proposed to be taken has been approved in writing by an officer authorised in this behalf by the Board. Sub-section (5) of section 36 gives any person aggrieved by an order of the authorized officer under clause (b) of sub-section (1) a right to appeal to the Tribunal.

13.1 In clause (a) of sub-section (1) of section 40B of the Bombay Primary Education Act, it is provided that no teacher of a recognised private primary school shall be dismissed or removed or reduced in rank nor his services be otherwise terminated until (a) he has been given an opportunity of showing cause against the action proposed to be taken and (b) the action proposed has been approved in writing by the Administrative Officer of the School-Board. Sub-section (5) of section 40B of the Bombay Primary Education Act gives a teacher aggrieved by the order of the Administrative Officer under sub-clause (ii) of clause (a) of sub-section (1) a right of appeal

to the Tribunal.

13.2 It can thus be seen that sub-section (1) of section 36 of the Gujarat Secondary Education Act and sub-section (1) of section 40B of the Bombay Primary Education Act unlike in the case of sub-section (1) of section 14 of the Gujarat Universities Services Tribunal Act do not refer to requirement of informing the employee of the charges against him nor does it provide for an opportunity of being heard being given in respect of those charges. In my view, the vital difference between the provisions of sub-section (1) of section 14 of the Gujarat Universities Services Tribunal Act on one hand and the relevant provisions of sub-section (1) of section 36 of the Gujarat Secondary Education Act and sub-section (1) of section 40B of the Bombay Primary Education Act on the other is the requirement of informing the employee of the charges against him and being given an opportunity of being heard with respect to those charges as found in sub-section (1) of section 14 of the Gujarat Universities Services Tribunal Act. In my view, this is a material difference and changes the entire complexion of the scheme of the said section. The words "otherwise terminated" have been used in section 14 of the said Act in entiely different context as compared to section 36 of the Gujarat Secondary Education Act and section 40B of the Bombay Primary Education Act. It is, therefore, not possible to interpret the said words ignoring the context in which they are used in the said Act. As noted above, the intention of the Legislature in my view is only to cover the penal actions of the employer under sub-section (1) of section 14 of the Gujarat Universities Services Tribunal Act. In view of this material difference, I find that the provisions of section 14 of the Gujarat Universities Services Tribunal Act are not in pari materia with the provisions of section 36 of the Gujarat Secondary Education Act or section 40B of the Bombay Primary Education Act.

14. In the decision in the case of Babu Khan v. Nazim Khan, (2001) 5 SCC 375, the Hon'ble Supreme Court observed that "it is not a sound principle of construction to interpret a provision of an enactment following the decisions rendered on a similar provision of an enactment when two statutes are not in pari materia. In the decision in Jagatram Ahuja v. Commr. of Gift Tax, (2000) 8 SCC 249, the Hon'ble Supreme Court has made the following observations :-

"23. We find that Kantilal Trikamlal case supports the view taken in Getty Chettiar case.

> Added to this, Section 2(15) of the Estate Duty Act, defining "property" came up consideration in Kantilal Trikamlal case. We may state here itself that the words and expressions defined in one statute as judicially interpreted do not afford a guide to construction of the same words or expressions in another statute unless both the statutes are pari materia legislations or it is specifically so provided in one statute to give the same meaning to the words as defined in other statute. The main and object of the two legislations, the Gift Tax Act and the Estate Duty Act are not similar."

15. In view of the above judicial pronouncements and in view of the conclusions that I have reached to the effect that section 14 of the Gujarat Universities Services Tribunal Act is not in pari materia with the provisions of section 36 of the Gujarat Secondary Education Act or section 40B of the Bombay Primary Education Act, it is not possible to follow the decisions of the learned single Judge in the case of Chhaganbhai P. Oza (supra) and Mahuva Kelavani Sahayak Samaj (supra) since the said decisions are rendered in the background of the provisions of section 36 of the Gujarat Secondary Education Act and section 40-B of the Bombay Primary Education Act respectively.

16. It may be noted that in a decision dated 8th March, 1979, rendered by the learned single Judge of this High Court in Special Civil Application No.652 of 1979 in the case of Sharda Education Trust v. Kiritkumar Chimanlal Shelat, the learned single Judge of this High Court had taken a view that the procedure as laid down in section 36 of the Gujarat Secondary Education Act would have to be followed even in case where termination of a teacher is concerned on account of closure of the school. It may be also be noted that the decision of the learned single Judge was upheld by a Division Bench of this High Court in a decision dated 25.7.79 while dismissing the Letters Patent Appeal No.174/79. One may also note that finding that the provisions of section 40-B of the Bombay Primary Education Act are in pari materia with the provisions of section 36 of the Gujarat Secondary Education Act, a learned single Judge of this High Court had while disposing of Special Civil Application No.3271 of 1992 by a judgment dated 29th July, 1994 followed the said view in case of the provisions of section 40-B of the Bombay Primary Education Act also.

17. However, in view of my conclusion that the

provisions of Gujarat Universities Services Tribunal Act cannot be compared in this regard with the provisions of other two statutes, it is not possible for me to follow the ratio laid down in the above mentioned decisions which have been rendered in the background of the respective provisions of the Gujarat Secondary Education Act and Bombay Primary Education Act.

18. At this stage, counsel for the employees pointed out from the impugned decision of the Tribunal that the Tribunal had adjudicated only upon a single point of violation of the provisions of section 14 of the said Act and rest of the contentions though raised by the applicants i.e. employees concerned, were not adjudicated upon and liberty was granted to those employees to raise the same in future if necessity arises.

19. In view of my conclusion that the Tribunal had erred in holding that the action of termination of the employees was in violation of the procedure laid down in section 14 of the Gujarat Universities Services Tribunal Act and consequently since I am inclined to set aside the impugned judgment of the Tribunal and as noted above, the Tribunal had not adjudicated upon other contentions of the employees, the matter shall have to be remanded to the Tribunal for further consideration of the remaining surviving contentions raised by the employees.

20. In the result, the petitions are allowed. The impugned order dated 29.12.79 allowing Application Nos.6 & 7 of 1999 passed by the Gujarat Universities Services Tribunal is quashed and set aside. The matters are remanded to the Tribunal for fresh consideration in light of the above observations. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)
(vjn)